

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
PINE INVESTMENT CO, }

Appearances:

For Appellant: Nathan Schwartz, Attorney at Law

For Respondent: Peter S. Pierson
Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Pine Investment Co. against a proposed assessment of additional franchise tax in the amount of \$1,018.34 for the taxable year ended February 28, 1962.

This appeal is a companion to the appeal of Palm Development Co., this day decided. The issue is whether the income of a "commencing" corporation for the year in which it dissolved and transferred its assets to appellant which held all of the stock of the commencing corporation, is includible in the *measure of a franchise tax* on appellant as well as in the measure of a franchise tax on the commencing corporation,

Appellant began business in California in 1958. It adopted a fiscal year ending February 28. In 1960 it acquired all of the stock of Lorca Investment Co.

Lorca Investment Co. was incorporated and commenced business in California on November 2, 1959. It adopted a fiscal year ending June 30. For its first, short taxable year of November 2, 1959, to June 30, 1960, Lorca was subject to a franchise tax measured by the income of that year, (Rev. & Tax. Code, § 23222,)

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On November 10, 1960, Lorca was dissolved and all of its assets were transferred to appellant. Since Lorca was a commencing corporation which did business for less than 12 months in its second taxable year (July 1, 1960, to November 10, 1960), Lorca was subject to a franchise tax for that year measured by its income for that year. (Rev. & Tax. Code, § 23222a.)

Respondent Franchise Tax Board does not question the correctness of the taxes paid by Lorca. On the ground that the transfer of assets called into play certain reorganization provisions, however, respondent also included Lorca's income for the period July 1, 1960, to November 10, 1960, in the measure of appellant's tax for its taxable year ended February 28, 1962. Appellant contends that none of Lorca's income is includible in the measure of appellant's tax,

As we have concluded in the Appeal of Palm Development Co., this day decided, the reorganization provisions upon which respondent relies (Rev. & Tax. Code, §§ 23251-23254) do not apply where the transferor is a commencing corporation subject upon dissolution to the provisions of section 23222a. For the reasons stated in the Palm Development appeal, respondent's action must be reversed.

O R D E R

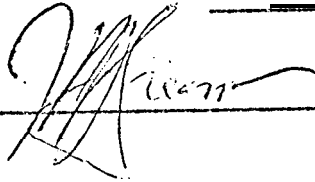
Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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IT IS HEREBY ORDERED , ADJUDGED AND DECREED, pursuant to section 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Pine Investment Co. against a proposed assessment of additional franchise tax in the amount of \$1,018.34 for the taxable year ended February 28, 1962, be and the same is hereby reversed.

Done at Sacramento California, this 15th day of December , 1966, by the State Board of Equalization.

_____, Chairman
Paul R. Leake, Member
John W. Lynch, Member
Robert H. Mori, Member
_____, Member

ATTEST: , Secretary